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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 PHILIP THOMSON,
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11 *Petitioner,*

12 vs.

13 BRIAN E. WILLIAMS, *et al.*,
14

15 *Respondents.*

2:09-cv-00647-RCJ-RJJ

ORDER

16 This habeas matter under 28 U.S.C. § 2254 comes before the Court on respondents'
17 (#8) to dismiss. Respondents seek dismissal of the petition, as amended, on the basis that,
18 *inter alia*, the petition is time-barred under the federal one-year limitation period in 28 U.S.C.
19 § 2244(d)(1). No opposition has been filed to the motion.

20 ***Background***

21 Petitioner Philip Thomson was convicted in Nevada state court, pursuant to a guilty
22 plea, of driving under the influence causing death or substantial bodily harm. The judgment
23 of conviction was filed on September 15, 2006. Petitioner did not file a direct appeal, and the
24 time for doing so expired on or about Monday October 16, 2006.¹

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28 ¹See #9, Ex. F. October 15, 2006, fell on a Sunday, and the thirty-day time period under Nevada state practice for filing a notice of appeal therefore expired the next day on Monday, October 16, 2006.

1 311 untolled days elapsed prior to the mailing of the state petition for filing, leaving 54
2 untolled days remaining after the issuance of the remittitur on December 30, 2008. The
3 federal limitation period, unless otherwise tolled, therefore would expire on or about Monday,
4 February 23, 2009.

5 Petitioner did not mail the original federal petition for filing in this matter until on or
6 about March 31, 2009, after the expiration of the federal limitation period, absent other tolling.

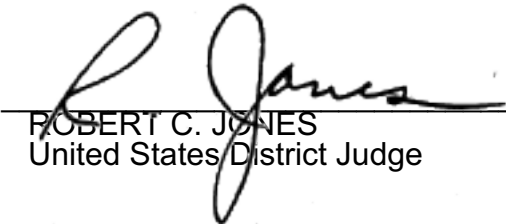
7 Petitioner has not filed an opposition to the motion to dismiss. He has not
8 demonstrated a basis for further statutory or equitable tolling in this matter or otherwise shown
9 why the petition should not be dismissed as time-barred under Section 2244(d)(1). The Court
10 issued a *Klingele* notice following upon the filing of the motion to dismiss, but no opposition
11 or other filing has been submitted.

12 This action accordingly will be dismissed with prejudice as untimely.

13 IT THEREFORE IS ORDERED, following upon the Court's independent review as well
14 as under Local Rule LR 7-2(d), that respondents' motion (#8) to dismiss is GRANTED and that
15 the petition, as amended, shall be DISMISSED with prejudice as time-barred.

16 The Clerk of Court shall enter final judgment accordingly in favor of respondents and
17 against petitioner, dismissing this action with prejudice.

18 DATED: September 30, 2009

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21 
22 ROBERT C. JONES
23 United States District Judge
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26 _____
27 ⁴(...continued)

28 2003)(in a context where the federal one-year limitation period was not at issue, the panel noted that Nevada does not recognize the prison mailbox rule for state post-conviction petitions, such that the petition is not filed under Nevada state law until actually received by the state court clerk).